ment. *Charlotte v. Atlantic Bitulithic Co.* (1915) 228 Fed. 456; *Schaefer & Co. v. Ely* (1911) 84 Conn. 501. Professor Wigmore maintains that the rule requiring the facts to be stated first is based on a misconception of the meaning of "opinion." Originally the term was applied only to guesswork and not intended to hinder or exclude a statement formed from personal examination. It is sufficient to ask the expert if he has made an actual examination, and then permit him to state his opinion. This rule would remove burdensome details, and would work no injustice to the opposing party, as every fact even to the smallest detail could be brought out on cross-examination. Wigmore, *Evidence,* secs. 675, 1922. This view has been adopted in several comparatively recent cases. *People v. Faber* (1910) 199 N. Y. 256; *State v. Ross* (1915) 178 S. W. (Mo.) 475; *Commonwealth v. Johnson* (1905) 188 Mass. 382. In the principal case some of the facts were already before the jury, but the language of the court is in entire accord with the latter doctrine. It is submitted that any change in the present cumbersome state of our law is exceedingly desirable.

J. E. H.

EVIDENCE—NON-EXPERT OPINION—ADMISSIBILITY.—STATE v. PRUETT (1916) 160 PAC. (N. M.) 362.—The defendant was indicted for murder. At the trial the state's witnesses testified over objection that they saw knee-prints adjacent to a cedar bush near the scene of the homicide. One witness stated farther, that the knee-print he identified was at a normal distance from a toe-print of the left foot and opposite a ball-print of the right foot. *Held,* that the testimony was admissible.

Opinions of non-expert witnesses are admitted where, by the nature of the matter, an attempted description, because insufficient or vague, would leave the jury unable to form a judgment of its own. *Com. v. Sturtivant* (1875) 117 Mass. 122; *Evans v. People* (1858) 12 Mich. 35; *Bates v. Sharon* (1873) 45 Vt. 481. Under this recognized rule witnesses have been permitted to express opinions on the physical cause of a great variety of marks and imprints. The testimony may be as to what kind of object produced the mark in question, as for example, that overshoes left certain tracks found in the snow. *State v. Ward* (1888) 61 Vt. 153. Or it may go farther and indicate what particular one of a class made the impressions observed. Accordingly, the opinion that certain foot-prints were left by a particular pair of shoes worn by the defendant has been admitted. *State v. Reitz* (1880) 83 N. C. 636. Similarly, the statement that the wagon-track and hoof-prints about the scene of a theft were the same as those seen by the witness elsewhere was admitted. *Williams v. State* (1916) 182 S. W. (Tex.) 335. A stricter application is found, however, in some states which permit only a description of the several tracks, barring opinion thereon. *Terry v. State* (1898) 23 So. (Ala.) 776; *State v. Green* (1893) 40 S. C. 328, 330. The broader rule, admitting opinion, has been applied to testimony involving other varieties of marks, seemingly less characteristic. In a homicide case, the witness, having seen a depression in a bed, stated that in his opinion it was made

by a person's head. *State v. Welch* (1892) 36 W. Va. 690. Testimony, "that the ends of a person's fingers were like a burn, shiny," also has been held unobjectionable. *Fortier v. Western F'd'y Co.* (1915) 182 Ill. App. 115. The decision also in a very recent case held admissible an opinion that cuts on plaintiff's thumb were teeth marks which were caused by a bite. *Patterson v. Blatti* (1916) 157 N. W. (Minn.) 717. The principal case presents an interesting variation of the applicability of the rule, but in no sense does it seem a departure in principle.

M. S. B.

EVIDENCE—NON-EXPERT'S OPINION AS TO MENTAL CAPACITY—THE MASSACHUSETTS DIVISION LINE.—RAYMOND V. FLINT (1917) 114 N. E. (MASS.) 811.—In a proceeding involving the mental condition of a deceased grantor, a witness was asked whether she noticed anything in the deceased's conversation, or otherwise, that indicated mental failing. This question was objected to on the ground that it called for an expression of an opinion by a non-expert witness. *Held,* that the question was competent, as it called for a statement of "fact."

The general rule undoubtedly is that the opinion of a non-expert witness as to a disputed fact, whether it be operative or evidential in character, is inadmissible if it involves a fairly elaborate process of inference. *Masterson v. St. Louis Transit Co.* (1907) 204 Mo. 507; *Shuler v. State* (1906) 126 Ga. 630; *Lewis v. Brown* (1856) 41 Me. 448. As regards some questions, particularly those involving sanity or insanity, many jurisdictions allow the opinions or inferences of lay witnesses provided they have first placed before the jury the facts upon which the opinion is based. *State v. Smith* (1901) 106 La. 33; *The Berry Will Case* (1901) 93 Md. 560; *State v. Cross* (1900) 72 Conn. 722. A few courts indeed go farther and permit a non-expert witness to give his opinion after merely testifying to having had adequate opportunity for observing the person whose mental capacity is in issue. *Turner v. American Security & T. Co.* (1909) 213 U. S. 257; *Hardy v. Merrill* (1875) 50 N. H. 227; see *Grand Lodge v. Wieting* (1897) 168 Ill. 408; *Grimshaw v. Kent* (1903) 67 Kan. 463. The modern Massachusetts doctrine, however, is less liberal, for it permits a layman to testify to a person's general rationality only with reference to particular acts or specific conduct, and not independently of such particular acts or specific conduct. *Hogan v. Roche's Heirs* (1901) 179 Mass. 510; *Clark v. Clark* (1897) 168 Mass. 523; *May v. Bradlee* (1875) 127 Mass. 418; *Nash v. Hunt* (1874) 116 Mass. 251; see Wigmore, *Evidence,* Vol. III, sec. 1938. In the application of this anomalous rule, which is presumably adopted to assist the jury in arriving at more accurate and trustworthy deductions, the Massachusetts courts are often forced to many fine distinctions which amount to the apotheosis of artificiality. The following questions were held proper: "any fact which led you to infer that there was any derangement of intellect," *May v. Bradlee, supra;* "that he was not a bright boy," *Laplante v. Warren Cotton Mills* (1896) 165 Mass. 487; "whether your sister has failed or has not failed in her mental capacity during the past five years," *Clark v. Clark, supra;*